ing engine, which after two years' usage was discovered to have an actual capacity of only twenty-two horse-power. Upon suit by the plaintiff to recover the unpaid installments of the purchase price the defendant claimed the right to reject the engine and to recover the installments already paid. It was held that the defendant could recover the payments he had made, less $204, upon return of the engine to the seller. It was evident that the variation in horse-power could not reasonably have been discovered before. But to avoid the harsh operation of the English rule the court was forced to strain the facts in order to find that the representation was a condition of the sale and that title had never passed. However, on the findings the decision reaches a just result. The interesting feature of the case is that the seller was allowed to retain part of the purchase price. Curiously, however, the Canadian court did not state the basis upon which this deduction was estimated. One possible measure of the deduction might be the deterioration in value of the engine, but there seems to be no authority for this basis of calculation.[13] Probably the deduction was the estimated value of the benefit conferred upon the purchaser — a value based upon the principles of quasi-contract for unjust enrichment. This seems to be a more logical basis, and there is some authority to support such a deduction.[14] The adoption of the solution offered by the Canadian court would afford a practical and just rule for every case of breach of warranty — the buyer should be allowed to rescind on condition that he compensate the seller for any actual benefit received. In England, if this rule were applied, an attempt to value the purchaser's title for a day would prove the futility of offering such a benefit as a bar to rescission. The adoption in the United States of this solution would remove any possibility of hardship upon the seller.

RECENT CASES

AGENCY — AGENT'S LIABILITY TO THIRD PERSONS — WRITTEN CONTRACT FOR UNDISCLOSED PRINCIPAL. — An action was brought against the agent for failure to deliver goods under a written contract in which he described himself as "manufacturers' selling agent" and signed his own name. No other evidence having been offered, the lower court dismissed the complaint. *Held*, that a new trial be granted. *Levy* v. *Shour*, 178 N. Y. Supp. 227.

For a discussion of the principles involved in this case, see NOTES, p. 591, *supra*.

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[13] In Rice *v.* Butler, 160 N. Y. 578, 55 N. E. 275 (1899), the court calculated the deduction either as the value of the benefit received by the purchaser or as the amount of the deterioration in the property.

[14] Todd *v.* Leach, 100 Ga. 227, 28 S. E. 43 (1897); Wilson *v.* Burks, 71 Ga. 862 (1883); Baston *v.* Clifford, 68 Ill. 67 (1873); Syck *v.* Hellier, 140 Ky. 388, 131 S. W. 30 (1910); Vanatter *v.* Marquardt, 134 Mich. 99, 95 N. W. 977 (1903); Todd *v.* McLaughlin, 125 Mich. 268, 84 N. W. 146 (1900); Johnson *v.* Northwestern Mutual Life Ins. Co., 56 Minn. 365, 59 N. W. 992 (1894); Kicks *v.* State Bank of Lisbon, 12 N. D. 576, 98 N. W. 408 (1904); Hall *v.* Butterfield, 59 N. H. 354 (1879); Rice *v.* Butler, *supra*; Mason *v.* Lawing, 10 Lea. (Tenn.) 264 (1882). See KEENER ON QUASI-CONTRACTS, 305, 306. See WOODWARD ON QUASI-CONTRACTS, § 266. See WILLISTON'S WALD'S POLLOCK ON CONTRACTS, 343, 344. See Samuel Williston, "Repudiation of Contracts," 14 HARV. L. REV. 326–328. See 13 HARV. L. REV. 410.

ATTORNEYS — RELATION BETWEEN ATTORNEY AND CLIENT — LIABILITY FOR FAILURE TO BRING SUIT WITHIN PERIOD OF LIMITATIONS. — The plaintiff engaged the defendants, a firm of solicitors, to bring an action upon a claim. The obligor offered to settle, and the defendants transmitted the offer to the plaintiff. The latter delayed so long in answering that the defendants thought the offer was accepted. As a result, when suit was finally brought, the period of the Statute of Limitations (six months) had expired, and although the plaintiff contended that the obligor was estopped from setting up the statute, the judgment was against him. He then instituted this action for negligence in the performance of professional duties. The trial court found for the defendants. *Held*, that judgment be entered for the plaintiff. *Fletcher* v. *Jubb, Booth, & Hollwell*, 54 L. J. 411.

An attorney can be held to no higher standard than that of due care in the performance of legal work intrusted to him. *Godefroy* v. *Dalton*, 6 Bing. 460; *Malone* v. *Gerth*, 100 Wis. 166, 75 N. W. 972. But if he falls below that standard he is liable to the client for all damages proximately resulting therefrom to the latter. *Hart* v. *Frame*, 6 C. & F. 193; *Forrow* v. *Arnold*, 22 R. I. 305, 47 Atl. 693. Delay in the institution of proceedings, resulting in the barring of the action by the Statute of Limitations, has been held to be actionable negligence. *Hunter* v. *Caldwell*, 12 Jur. 285; *Oldham* v. *Sparks*, 28 Tex. 425. However, what constitutes negligence is a question to be decided, within the bounds of reason, by the trier of the facts. *Hunter* v. *Caldwell*, *supra; Pennington* v. *Yell*, 11 Ark. 212. Accordingly, it would seem that, in view of the complexity of the circumstances, the decision of the trial court should have been permitted to stand. Furthermore, in the trial against the obligor, the issue as to the Statute of Limitations involved a point of some nicety; and an attorney is not liable for an erroneous judgment on a reasonably doubtful legal question. *Kemp* v. *Burt*, 1 N. & M. 262; *Citizens' Loan Ass'n.* v. *Friedley*, 123 Ind. 143, 23 N. E. 1075.

CARRIERS — DUTY TO TRANSPORT AND DELIVER — APPROPRIATION BY CARRIER OF COMMERCIAL SHIPMENT OF COAL TO ITS OWN CONTRACT WITH THE CONSIGNOR. — A coal company, as consignor, in pursuance to its contract with the plaintiff, put coal on the defendant railroad's cars tagged to the plaintiff as consignee. The defendant had previously notified the coal company of its intention to refuse to accept the coal for shipment and to appropriate the coal to its own use under a previous contract between it and the company on which the latter was delinquent. The defendant carried out this intention and the plaintiff brought this action for the conversion of the coal. *Held*, that the defendant is not liable. *Springfield Light, Heat & Power Co.* v. *Norfolk & W. Ry. Co.* 260 Fed. 254 (Dist. Ct. S. D. Ohio).

The usual rule is that delivery by the shipper to the carrier vests title in the consignee. *Cox* v. *Andersen*, 194 Mass. 136, 80 N. E. 236; *Glauber Mfg. Co.* v. *Voter*, 70 N. H. 332, 47 Atl. 612. But this rule presupposes that the delivery is complete and with the consent of the carrier. *Sears, Roebuck & Co.* v. *Martin*, 145 Ala. 663, 39 So. 722; *Ward* v. *Taylor*, 56 Ill. 494. The principal case, then, might possibly be supported on the ground that the plaintiff was not the owner of the coal at the time of the alleged conversion and, therefore, not the proper party to sue; although an earlier case seems to indicate the contrary. See *Luhrig Coal Co.* v. *Jones & Adams Co.*, 141 Fed. 617, 624. The court, however, went further, and asserted a right of self-help by the carriers in cases of necessity to secure the performance of contractual obligations. It has been held that there is no right in a bailee in possession of another's property to appropriate it to an executory contract with the latter. *Atlantic Building Supply Co.* v. *Vulcanite Portland Cement Co.*, 203 N. Y. 133, 96 N. E. 370; *Newcomb-Buchanan Co.* v. *Baskett*, 4 Ky. L. Rep. 828. And a public service